

Before the  
Federal Communications Commission  
Washington, D.C. 20554

ORIGINAL

RECEIVED

MAY 31 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

WT Docket No. 95-69

DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Assessment and Collection of Charges for )  
FCC Proprietary Remote Software Packages, )  
On-Line Communications Service Charges, )  
and Bidder's Information Packages in Con- )  
nection with Auctionable Services )

To: The Commission

**COMMENTS OF BELL SOUTH CORPORATION**

BellSouth Corporation ("BellSouth"), through its attorneys, hereby submits these Comments in response to the Commission's *Notice of Proposed Rulemaking*, WT Docket 95-69, FCC 95-202 (May 16, 1995) (*NPRM*), on behalf of the various subsidiaries and affiliates of BellSouth that may participate in FCC spectrum auctions.

**I. BELL SOUTH OPPOSES THE \$4.00 PER MINUTE CHARGE PROPOSED FOR USE OF THE ONLINE AUCTION SYSTEM**

BellSouth urges the Commission not to adopt its proposal to charge \$4.00 per minute for access to its online system, which can be used for submission of applications and bids, obtaining auction results, and reviewing filed applications. As shown below, there is no legal or policy justification for imposing a charge more than ten times as high as that assessed for use of the online bidding system in the prior PCS auctions, while there are substantial public interest justifications for keeping the cost of auction participation as low as possible.

No. of Copies rec'd 005  
List A B C D E

**A. Lack of Legal or Policy Basis for Proposed Online Charges**

The *NPRM* proposes to charge \$240.00 per hour for use of its newly-developed online network, more than ten times the \$23.00 hourly charge imposed on users of the online bidding system in previous PCS auctions. The *NPRM* (at ¶¶ 6, 8) acknowledges that the previous fee, which was collected by the contractor operating the online network, allowed the contractor to recover its costs and make “a reasonable profit.” The FCC provides little explanation for why it proposes to replace this service with its own software and service at a much higher price.

When it authorized the use of competitive bidding, Congress provided a specific means for the FCC to recover the cost of the auction process — in 47 U.S.C. § 309(j)(8)(B), it directed the Commission to cover the cost of conducting auctions from the auction revenues.<sup>1</sup> Indeed, the *NPRM* (at ¶ 6) acknowledges that the Commission fully recovered its development costs for the electronic bidding system used in three previous auctions from the proceeds of those auctions. Accordingly, the Commission may recover the cost of its new online bidding and application submission system entirely from the auction revenues, and there is no need for the Commission to impose a separate fee for access to its online service. Indeed, it is questionable whether the Commission may impose

---

<sup>1</sup> 47 U.S.C. § j(8) provides, in relevant part:

(8) Treatment of Revenues.—

(A) General Rule.—Except as provided in subparagraph (B), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

(B) Retention of Revenues.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. . . .

user fees to recover auction-related costs, when Congress has already provided a different means for recovering those costs. *See* 31 U.S.C. § 9701(c)(1)-(2).

If the FCC nevertheless decides to impose a user fee for access to its online bidding network, that fee must represent either the “full cost” to the Commission of the service rendered or the “market price” of such service. *NPRM* at ¶ 3; *see* Independent Offices Appropriation Act, 31 U.S.C. § 9701(a); OMB Circular A-25, 58 Fed. Reg. 38,42 (July 5, 1993). BellSouth submits that the FCC’s proposed \$240.00 hourly charge represents neither. The *NPRM* does not set forth any estimate of the Commission’s costs, relying only on the “market price” alternative.

The *NPRM* claims (at ¶¶ 9, 10) that its proposal is based on the “prevailing price” for “online reference and research services operating in the open market,” specifically Lexis and Westlaw. These are not online auction services, however; each is a legal research service providing access to an enormous database of case law and other materials. The FCC’s system will not provide access to a comparably-sized database of research materials; it will allow entry and retrieval of applications and bids.<sup>2</sup>

An online auction system operated by the private sector would be a better benchmark for determining the market price for the Commission’s system. As the Commission acknowledges, the private-sector cost of an online auction system is \$23.00 per hour, less than one-tenth the cost of performing legal research on the Lexis or Westlaw networks. If a more generalized online research

---

<sup>2</sup> There are substantial differences in how an online legal research system and an online auction system are used. Legal research systems such as Lexis and Westlaw do not allow users to upload materials, while the FCC’s proposed system will provide a facility for electronically uploading applications. Moreover, the auction system will be used for very different types of research from that done via Lexis or Westlaw. Legal research systems are generally used on a highly targeted basis for specific searches, while auction systems are used to monitor ongoing developments in the auction process. Rather than log in for a short time to determine the answer to a narrow question, an auction participant is likely to remain online for an extended period for the duration of the auction.

system somehow is deemed comparable to the online auction system, BellSouth suggests comparison with the rates charged by CompuServe, Prodigy, America Online, and other information service providers, who provide online access to research materials, uploading and downloading files, and provide for submission of orders at hourly rates in the range of \$4-10.00.

#### **B. Adverse Public Interest Consequences**

BellSouth submits that the high charges proposed for the online auction system will adversely affect the public interest in several ways.

Most important is that the high charges will disproportionately burden the economically-disadvantaged small and women- or minority-owned businesses for whom Congress and the Commission sought to provide opportunities through the auction process. Access to the online bidding system for Block A and B MTA licenses cost only \$23.00 per hour (plus long-distance charges), while the proposed \$240.00 hourly charge will apply to the Block C and F licenses set aside for entrepreneurs, even though the Commission has found that smaller companies such as these have limited access to capital.

The adverse effect of the online charges will be greatly multiplied for entrepreneurial companies due to the fact that the online charge are up-front costs, which reduce the cash available for a down payment under the installment payment plan. A 10% down payment requirement means that every dollar available for the down payment represents ten dollars of bidding capacity. By imposing an up-front charge for online access, the Commission diminishes these companies' bidding capacity by ten times that amount. For example, an entrepreneur eligible for installment payments with 10% down may have \$10,000 in capital currently available, which allows it to bid \$100,000 for a license. Every \$4.00 minute spent online reduces the company's bidding capacity by \$40.00.

If the company incurs online charges of \$1,000, it will only have \$9000 available for a down payment, reducing its bidding capacity to \$90,000.

The adverse effects of high-cost online access will not affect only entrepreneurs, however. The cost of participating in the auction will inevitably reduce the high bids somewhat, even without the multiplier effect, and the number of bidders may diminish. Moreover, the high online charges will deter some bidders in each auction from using the online auction system. This will increase the number of bidders submitting bids telephonically or in person, thereby increasing the Commission's cost of conducting the auction. It will also result in some bidders having access to more limited information about the auction, increasing the possibility of a suboptimal winning bid and reducing the revenues from the auction. In all, BellSouth submits that the public interest would not be served by a substantial increase in the charges for online participation in the auction.

## **II. PUBLIC TESTING OF ONLINE AUCTION SYSTEM**

BellSouth urges the Commission to allow the public to test not only the remote access software but also the online system well in advance of the auction. No online charges should be imposed for participating in such tests, because the beneficiary of the testing would be the auction process.<sup>3</sup> The results of the tests would allow incremental improvements to be made in the software to address deficiencies discovered in the tests. It would be appropriate to test the system by conducting several rounds of "mock auctions" well in advance of the actual Block C auction (*e.g.*, one test six weeks in advance and another test two weeks in advance).

---

<sup>3</sup> Because no licenses would be awarded as a result of the test, no private benefit would be conferred thereby, and accordingly the imposition of "user fees" would not be appropriate.

### III. OTHER MATTERS

Several issues are unaddressed by the *NPRM* and should be clarified:

- **On-site Bid Entry.** The *NPRM* is silent about on-site entry of bids, but the Block C Bidder's Information Package states, "[t]here will be no on-site bidding allowed for this auction."<sup>4</sup> BellSouth requests that the Commission clarify that in future auctions, unless stated otherwise, all bidders have the option of entering bids in person at the auction site without payment of an online charge.
- **Immediate, Secure Confirmation.** According to the Bidder's Information Package, the online software package allows the user to print a hard copy of a bid submission or withdrawal for confirmation, and telephonic bidders will receive a faxed confirmation.<sup>5</sup> BellSouth supports this practice, but urges the Commission to include in all such confirmations a secure electronic "signature" and time-stamp. This would ensure system integrity and prevent fraud.
- **Immediate Availability of Auction Information.** The Commission should take steps to ensure that relevant auction information will always be immediately available via the online bidding system. Auction status information, waiver usage, round results, expected downtime, scheduling information, and the like should be updated frequently, and all screens of such information should be time-stamped.
- **System Status Information.** Cost permitting, the Commission should prevent computer failures from affecting online bidding by establishing fully redundant systems.<sup>6</sup> In any case, the Commission should provide a means for advising auction participants *immediately* when the online system is down and when it will be back up.<sup>7</sup> Since this cannot be accomplished through the online system itself, BellSouth urges the Commission to provide bidders with notification by alternative means when the system is unavailable. A variety of alternatives are available, such as e-mail, pager, fax broadcast, voice mail, and telephone. The Commission should also provide a system status recording that could be accessed by telephone at all times.

---

<sup>4</sup> Broadband PCS Block C Bidder Information Package at 69.

<sup>5</sup> *Id.*

<sup>6</sup> This is particularly the case if the Commission imposes a charge for online access comparable to the cost of using Lexis or Westlaw. Information services charging high fees typically have highly redundant systems for the sake of reliability.

<sup>7</sup> More than once during the Block A and B auction, the online bidding system went down completely. At those times, there was no access to the system and no on-line announcement. Bidders had to call the telephonic bid submission lines or be present at the auction site to ascertain the online system's status.

- **Hot Line.** The Commission should establish a "hot line" for the reporting of system trouble directly to the Commission personnel responsible for maintaining the online system. This would allow immediate diagnosis and repair of remote access problems.

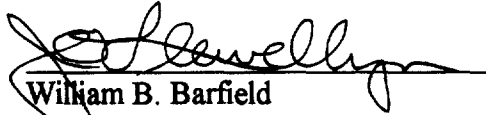
## CONCLUSION

For the reasons stated above, BellSouth submits that the \$4.00 per minute charge proposed for online auction access should not be adopted, urges the Commission to take effective steps, including mock auctions, to assure system integrity and data availability, and requests the clarifications discussed.


Respectfully submitted,

BELLSOUTH CORPORATION

By:

  
William B. Barfield  
Jim O. Llewellyn  
1155 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3610  
(404) 249-4445

By:

  
Charles P. Featherstun  
David G. Richards  
1133 21st Street, N.W., Suite 900  
Washington, D.C. 20036

*Its attorneys.*

May 31, 1995